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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re I.H., a Person Coming Under the Juvenile
Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

R.H.,

Defendant and Appellant.

F067231

(Super. Ct. No. 516573)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Stanislaus County. Ann Q.
Ameral, Judge.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and
Appellant.

John P. Doering, County Counsel and Carrie M. Stephens, Deputy County
Counsel, for Plaintiff and Respondent.

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* Before Poochigian, J., Gomes, A.P.J. and Peña, J.

R.H. (father) appeals from the juvenile court's jurisdictional and dispositional orders declaring his infant daughter, I.H., a dependent of the court pursuant to Welfare and Institutions Code¹ section 300, subdivision (b) (failure to protect) and subdivision (j) (abuse of sibling), and removing her from the parents' physical custody. Father contends the juvenile court erred in denying him reunification services and that insufficient evidence supports the court's removal order. We reject father's contentions and affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

Father and B.F. (mother) have had three children together, including I.H. Due to ongoing issues with substance abuse, father and mother failed to reunify with their two older children, H.H. and E.H., and their parental rights were terminated in April 2011. The children's adoptions were finalized in October 2011.

In late January 2013, mother went into labor at the Public Safety Center, where she had recently been incarcerated on drug-related charges. When she gave birth to I.H., mother tested positive for amphetamines and THC. I.H. was born prematurely at 34 weeks and placed in the NICU due to her low weight of four pounds, 11 ounces.

Father tested positive for methamphetamine at the time of I.H.'s birth. He reported that, although mother smoked marijuana occasionally, he had no concerns about her drug use. Father also reported that he served a two-year prison term for possession of a controlled substance, and that he was released from prison in May 2012.

Despite their prior child welfare history, mother and father continued to abuse drugs even while caring for mother's son, D.C., who was born in May 2011.

These dependency proceedings were initiated on February 5, 2013. I.H. and D.C. were taken into protective custody and placed together in a foster home.

¹ All further statutory references to the Welfare and Institutions Code unless otherwise specified.

In its jurisdiction/disposition report filed on March 1, 2013, the Stanislaus County Community Services Agency (agency) noted that father was given a referral for parenting and individual counseling at Sierra Vista Child and Family Services (Sierra), and for an AOD assessment. Father did not keep his scheduled appointment for the AOD assessment. Father's intake appointment with Sierra was scheduled for March 13, 2013.

The agency recommended the juvenile court deny reunification services to both parents under section 361.5, subdivision (b)(10) and (11) on the ground that, following their failure to reunify with E.H. and N.H., mother and father did not ameliorate the issues which had led to those children's dependencies. The agency reported that father had failed to address and continued to have criminal issues related to his substance abuse problems. He was recently incarcerated at the Stanislaus County Honor Farm for failing to comply with his probation.

As to mother, the agency noted that she failed to reunify with her two older children after she received extensive voluntary family maintenance and reunification services. While she would have periods of sobriety, she would relapse. She continued to use drugs and tested positive for amphetamines and THC at the time of I.H.'s birth.

On April 8, 2013, the matter came on for a contested jurisdictional/dispositional hearing. Among other things, mother testified she was currently living at the Redwoods Family Center (Redwoods) and had been there since March 19, 2013. Mother was referred to Redwoods at the conclusion of her AOD assessment on March 18, 2013. Mother was also taking parenting classes through Sierra, and was waiting for her assessment to attend the First Step program. In the meantime, she was participating in an interim group at First Step.

Mother suffered from mental illness, having been diagnosed with bipolar disorder, extreme anxiety, and extreme depression. When she was not on her medications, she would start using controlled substances again. Mother had been taking Depakote, Zoloft,

and Abilify to address her diagnoses, but stopped taking the medications when she became pregnant with I.H. because she kept hearing they caused birth defects.

Mother told the emergency social worker that she had arranged for her father, G.F. (grandfather), to care for D.C. after her current relapse and it was her intention to leave D.C. with grandfather for as long as she needed to take care of her problems. Mother wanted both of her children to be placed with grandfather.

Grandfather also testified, confirming he wanted the children placed with him. He also testified he had provided 80 percent of D.C.'s care during the past year and a half.

The juvenile court accepted father's offer of proof that, prior to going into his current in-custody status the previous Friday, he had an appointment scheduled with Nirvana. Father was unable to attend the appointment due to his in-custody status. Father's attorney later indicated that father's current incarceration was due to a weapons violation of his probation.

At the conclusion of the hearing, the juvenile court found the allegations in the petition to be true, asserted dependency jurisdiction over I.H. and D.C., and ordered the children removed from the parents' custody. The juvenile court denied reunification services to father pursuant to section 361.5, subdivision (b)(11), but granted reunification services to mother despite the agency's contrary recommendation. The court explained, in essence, that mother had made reasonable efforts to treat the problems that led to the removal of her two older children but failed because her mental health issues were not adequately addressed or understood at that time. Now that mother was addressing not only her substance abuse issues, but also her mental health issues, the court concluded, it was in the children's best interests to provide her with reunification services.

DISCUSSION

I. The juvenile court properly denied father reunification services.

The juvenile court is required to order family reunification services whenever a child is removed from the custody of his or her parent unless the court finds by clear and

convincing evidence that the parent is described by any of 15 exceptions set forth in section 361.5, subdivision (b). (§ 361.5, subds. (a) & (b)(1)-(15).) “[T]he Legislature, by enacting section 361.5, subdivision (b), has discerned ‘... it may be fruitless to provide reunification services under certain circumstances.’” (*In re Joshua M.* (1998) 66 Cal.App.4th 458, 467.) On review, we employ the substantial evidence test, bearing in mind that clear and convincing evidence requires a heightened burden of proof. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

Section 361.5, subdivision (b)(11) allows the juvenile court to deny a parent reunification services if the court finds by clear and convincing evidence that “the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and ... this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent.”

Here, father does not dispute there is substantial evidence he lost parental rights to his older children, E.H. and N.H., and failed to make a reasonable effort to treat the problems that led to their removal, and therefore substantial evidence supports the juvenile court’s order denying him reunification services. Instead, father appears to be arguing the court erred because it was in I.H.’s best interests to offer him reunification services. We disagree.

Section 361.5, subdivision (c) provides a juvenile court shall not order reunification services for a parent described in subdivision (b)(11) unless it finds by clear and convincing evidence that reunification services are in the child’s best interests. A reviewing court will not disturb a court’s ruling in a dependency proceeding “““unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].””” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

Father has not shown the juvenile court abused its discretion. At the combined jurisdictional/dispositional hearing, father presented no evidence showing it would be in I.H.'s best interests to order reunification services for him. His offer of proof merely established that he scheduled an intake appointment with a treatment program, but was prevented from attending the appointment because he was incarcerated. In other words, father only showed he made a preliminary and unsuccessful attempt to obtain treatment for his longstanding drug problem. On this record, we are unable to conclude the juvenile court exceeded the limits of its discretion by not finding it would be in I.H.'s best interests to offer reunification services to father.

We also reject father's argument that, because the juvenile court ordered reunification services for mother, it was in I.H.'s best interests for the court to order services for father. Father presents no authority for the proposition that, when reunification services are offered to one parent, it is inherently or necessarily in a child's best interests to offer services to the other parent. Indeed, in a slightly different context, it has been held that, "[a] court has discretion to terminate services for one parent even when ordering services for the other parent." (*In re Gabriel L.* (2009) 172 Cal.App.4th 644, 651 ["'In deciding whether to terminate the services of one parent who has failed to participate or make progress toward reunification, the court is not constrained by a consideration of the other parent's participation in services.' [Citation.]"].) (*Ibid.*)

There is no basis in the record to conclude the juvenile court abused its discretion by ordering reunification services for mother but not for father. Mother is not in a similar position to father. As already discussed, he does not dispute there is substantial evidence he failed to make a reasonable effort to treat the problems that led to the removal of I.H.'s siblings. On the other hand, the juvenile court found there was evidence mother made such efforts but failed because her mental health issues were not sufficiently recognized and addressed at the time.

Father's argument that it would be beneficial to offer him services because mother is likely to reunify with I.H. is based purely on speculation. In light of mother's history of relapses it is not a foregone conclusion that she will be able to overcome her persistent substance abuse problems and reunify with her children.

However, even assuming mother is likely to reunify with her children, this does not establish I.H. would necessarily benefit from father being provided with reunification services. Father's argument assumes he would be able to make effective use of such services and continue to be part of mother's life. In light of his utter failure to address his problems in the past, there is reason to believe father would not make good use of services were they to be provided, and mother's successful reunification with her children might very well depend on her successfully distancing herself from father.

In short, the juvenile court did not abuse its discretion in not finding that, despite the finding under section 361.5, subdivision (b)(11), it would be in I.H.'s best interests to offer services to father.

II. The juvenile court properly ordered I.H. removed from his custody.

Section 361, subdivision (c), permits the removal of a child from the custody of his or her parent if the juvenile court finds that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being" of the child if he or she were returned home, and "there are no reasonable means by which the [child]'s health can be protected without removing" the child from the parent's custody. (§ 361, subd. (c)(1).) We review a juvenile court's dispositional findings for substantial evidence. (*In re Cole C.* (2009) 174 Cal.App.4th 900, 916.) In general, a juvenile court's "jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. [Citation.] The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.]" (*Id.* at p. 917.)

Father does not challenge the sufficiency of the evidence supporting the juvenile court's jurisdictional findings. The same evidence supports the court's order removing I.H. from father's custody. Father tested positive for methamphetamine at the time of I.H.'s birth. He had an extensive history of substance abuse which resulted in the termination of his parental rights to his two older children. Despite the effect on himself and his family, he continued to use controlled substances and was incarcerated for a probation violation at the time of disposition. Under these circumstances, the juvenile court could reasonably conclude that father's substance abuse issues continued to pose a substantial risk of harm to I.H. and that such risk could only be obviated by removing her from his physical custody. Therefore, the juvenile court's removal order was supported by substantial evidence.

We find unpersuasive father's argument that insufficient evidence supports the juvenile court's removal order because the record showed grandfather was available as a caretaker and thus, according to father, "[t]he children could have safely been maintained with mother, with a court order that the maternal relatives be available to assist with their care." We agree with the agency that the issue of grandfather's suitability as a caretaker and ability to assist mother is irrelevant to the question of whether the removal order was proper as to father, which is the real issue before this court. However, the record does not support father's argument in any event.

Father's argument rests on the assumption that grandfather was, at the time of disposition, both willing and able to take placement of I.H. and her half-brother D.C. It is true that grandfather testified he wanted the children to be placed with him. However, he also acknowledged he had not yet applied for placement, although the agency had requested that he submit an application and he understood he was required to complete the application before placement could be made at his home.

On appeal, father faults the agency for discouraging grandfather from applying for placement. In this regard, grandfather testified regarding a conversation he had with

someone with the agency suggesting he was too old to care for the children. But the record also reflects that grandfather's girlfriend, in whose home he lived, independently contacted the agency, reporting that grandfather had recently been admitted to the hospital for a possible stroke, and stating grandfather was too old and in no condition to take the children.²

Whether or not the agency ultimately approves grandfather for placement of the children, the record clearly indicates he was not in a position immediately to receive I.H. into his home or provide the assistance father contends would allow I.H. to be safely maintained there without the necessity of a formal order removing her from her mother's custody. In our view, sufficient evidence supports the juvenile court's order removing I.H. from *both* her parents and we reject father's assertions to the contrary.

DISPOSITION

The orders are affirmed.

² In his testimony, grandfather acknowledged he was aware of his girlfriend's opposition to him taking placement of I.H. and D.C, but insisted he would move out of her house and get his own place if necessary to care for them. He also testified that when he was hospitalized, he only had a pinched nerve, which had produced stroke-like symptoms. He believed he was not too old and was able to care for the children.